

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

FREDERICK B KELLOGG

Debtor(s)

NOTICE OF MOTION AND MOTION
FOR DISMISSAL OR CONVERSION

Case No. - BKY 04-44148 NCD
Chapter 13

TO: Debtor(s), Debtor(s) Attorney, all parties in interest under Local Rule 9013-3, and the United States Trustee.

1. Jasmine Z. Keller, (Trustee), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m., or as soon thereafter as counsel may be heard, on **October 7, 2004**, in U.S. Bankruptcy Court, Courtroom 7 West, Seventh Floor, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 4, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 28, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). ***Unless a response opposing the motion is timely filed, the court may grant the motion without a hearing.***

4. The Court has jurisdiction of this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This motion arises under 11 U.S.C. § 1307 and Fed. R. Bankr. P. 1017. This motion is filed under Fed. R. Bankr. P. 9013 and Local Rule 9013-1 *et seq.* The petition commencing this Chapter 13 case was filed on 7/27/04. The case is now pending in this Court.

5. If testimony is necessary as to any facts relevant to this motion, Amber Bjork, Chapter 13 Trustee's Office, 12 South 6th Street, Suite 310, Minneapolis, Minnesota, will testify on behalf of the Trustee.

6. The Trustee requests that this case be dismissed or converted to a Chapter 7 case, and such other relief as the Court deems just, for the following reason(s):

(X) A. Debtor(s) have failed to appear at §341(a) meeting of creditors and has not been examined.

() B. Debtor(s) have failed to make the initial payment proposed by the plan within 30 days after the plan was filed, (11 U.S.C. §1326(a)(1)), and subsequent plan payments that may come due by the date of the hearing on this motion.

() C. The plan term has expired. The amount needed to complete the plan is \$.

() D. The Trustee has received a non-sufficient funds check. **All future payments must be made by money order or cashier's check if this motion is denied or withdrawn.**

() E. Confirmation of the Debtor(s)' plan has been denied.

() F. There has been a material default by the debtor(s) with respect to a term of the confirmed plan, namely,

() G. Debtor(s) have failed to make payments to Trustee thereby creating current defaults or arrearages on plan payments of \$0.00 as of September 17, 2004, and subsequent plan payments that may come due by the date of the hearing of this motion. The last payment credited to the Debtor(s)' account was on //. Total payments of \$0.00 have been made to date hereof. Required monthly payments are currently \$10315.00.

The September, 2004 payment is not included in the listed default amount.

Any payment less than the amount required to bring the plan current will not prevent dismissal of this case. If the default, including the payment due for September, is brought current by the hearing date, the Trustee will strike the motion.

WHEREFORE the Trustee requests an order granting the relief prayed for herein.

Jasmine Z. Keller, Trustee

Dated: September 17, 2004

/e/ Thomas E. Johnson
Thomas E. Johnson #52000
Margaret H. Culp #180609
Counsel for Chapter 13 Trustee
12 South 6th Street., Ste. 310
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Amber Bjork, an employee of the Trustee, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September 17, 2004

/e/ Amber Bjork
Amber Bjork
Chapter 13 Office

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

FREDERICK B KELLOGG

Debtor(s)

UNSWORN DECLARATION OF
PROOF OF SERVICE

Case No. - BKY 04-44148 NCD
Chapter 13

I, Amber Bjork, declare that on the date stated below I served a copy of the Notice of Motion and Motion for Dismissal or Conversion and Unsworn Declaration of Proof of Service, upon each of the entities named below by mailing to each of them a copy thereof, by enclosing same in an envelope with first-class mail, postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Copy to Debtor addressed to:

FREDERICK B KELLOGG
PO BOX 2001
CHANHASSEN, MN 55317

Copy to Debtor's Attorney addressed to:

Joseph W Dicker
1406 W Lake Street
Ste 207
Minneapolis, MN 55408-

Additional Copy(s) addressed to:

Copy to United States Trustee (By electronic means):

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

and I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 17, 2004

/e/ Amber Bjork
Amber Bjork
Chapter 13 Office